

performed by them in the trade or business, or unit thereof, acquired by the taxpayer.

Example. In April 1961 the X Partnership terminated after selling all of its property to the Y Corporation. During 1961, the X Partnership paid its employees and former employees a total of \$1,000,000 as remuneration subject to contributions under the employment compensation law of a State. (Note that the X Partnership did not qualify as an employer for 1961 for purposes of the Federal unemployment tax, because it had employees during less than 20 weeks in 1961.) When the Y Corporation acquired the property it concurrently employed all individuals who were then in the employ of the X Partnership. Assume that the X Partnership, if it had qualified as an employer for 1961, would have been entitled to a total credit against the Federal tax of \$30,000 under section 3302 (a) and (b), without regard to the limits in section 3302(c). Of the \$1,000,000 remuneration paid by the X Partnership in 1961, one-fifth (or \$200,000) was paid to individuals who were employed by the Y Corporation at the time it acquired the property of the X Partnership. Under section 3302(e), therefore, the Y Corporation is entitled to credit of \$6,000, which is one-fifth of the credit (\$30,000) which would have been available to the X Partnership.

(3) The aggregate amount of credit allowable to the taxpayer under section 3302 (a), (b), and (e) is subject to the limits in section 3302(c).

(c) *Proof of credit under section 3302(e).* Credit under section 3302(e) shall not be allowed against the tax for any taxable year unless there is submitted to the district director (1) such information or proof as may be called for in the return on which the credit is reported, or in the instructions relating to the return, and (2) such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the credit provided for under section 3302(e).

(d) *Cross-references.* See paragraph (b) of § 31.3306(b)(1)-1 for examples of the acquisition of property used in a trade or business, or in a separate unit thereof.

[T.D. 6658, 28 FR 6635, June 27, 1963]

§ 31.3306(a)-1 Who are employers.

(a) *Definition*—(1) *For calendar years 1956 through 1969, inclusive.* Every person who employs 4 or more employees in employment (within the meaning of

section 3306 (c) and (d)) on a total of 20 or more calendar days during any calendar year after 1955 and before 1970, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(1a) *For 1970 and subsequent calendar years.* Every person who employs 4 or more employees in employment (within the meaning of section 3306 (c) and (d)) on a total of 20 or more calendar days during a calendar year after 1969, or during the calendar year immediately preceding such a calendar year, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(2) *For calendar year 1955.* Every person who employs 8 or more employees in employment (within the meaning of section 3306 (c) and (d)) on a total of 20 or more calendar days during the calendar year 1955, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(3) *General agents of the Secretary of Commerce.* For provisions relating to the circumstances under which an employee who performs services as an officer or member of the crew of an American vessel (i) which is owned by or bareboat chartered to the United States and (ii) whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than for the United States, see § 31.3306 (N)-1.

(b) The several weeks in each of which occurs a day on which the prescribed number of employees are employed need not be consecutive weeks. It is not necessary that the employees so employed be the same individuals; they may be different individuals on each day. Neither is it necessary that the prescribed number of employees be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient if the total number of employees employed during the 24 hours of a calendar day is 4 or more (8 or more for the calendar year 1955).

(c) In determining whether a person employs a sufficient number of employees to be an employer subject to the

tax, each employee is counted with respect to services which constitute employment as defined in section 3306(c) (see § 31.3306(c)-2). No employee is counted with respect to services which do not constitute employment as so defined. See, however, paragraph (d) of this section.

(d) The provisions of paragraph (c) of this section are subject to the provisions of section 3306(d), relating to services which do not constitute employment but which are deemed to be employment, and relating to services which constitute employment but which are deemed not to be employment (see § 31.3306(d)-1). For example, if the services of an employee during a pay period are deemed to be employment under section 3306(d), even though a portion thereof does not constitute employment under section 3306(c), the employee is counted with respect to all services during the pay period. On the other hand, if the services of an employee during a pay period are deemed not to be employment, even though a portion thereof constitutes employment, the employee is not counted with respect to any services during the pay period.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7037, 35 FR 6709, Apr. 28, 1970]

§ 31.3306(b)-1 Wages.

(a) *Applicable law and regulations*—(1) *Remuneration paid after 1954.* Whether remuneration paid after 1954 for employment performed after 1938 constitutes wages is determined under section 3306(b). Accordingly, only remuneration paid after 1954 for employment performed after 1938 is covered by this section of the regulations and by the sections relating to the statutory exclusions from wages (§§ 31.3306(b)(1)-1 to 31.3306(b)(10)-1).

(2) *Remuneration paid after 1939 and before 1955.* Whether remuneration paid after 1939 and before 1955 for employment performed after 1938 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 403 (Regulations 107).

(3) *Remuneration paid in 1939.* Whether remuneration paid in 1939 for employment performed after 1938 constitutes

wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 400 (Regulations 90).

(b) The term “wages” means all remuneration for employment unless specifically excepted under section 3306(b) (see §§ 31.3306(b)(1)-1 to 31.3306(b)(10)-1, inclusive) or paragraph (j) of this section.

(c) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions are wages if paid as compensation for employment.

(d) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(e) Except in the case of remuneration paid for services not in the course of the employer's trade or business (see § 31.3306(b)(7)-1), the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payments.

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called “courtesy” discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term “facilities or privileges”, however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(g) Amounts of so-called “vacation allowances” paid to an employee constitute wages. Thus, the salary of an